



Appellant-Defendant Robert Trimpl appeals following his conviction for Operating While Intoxicated, a Class A misdemeanor.<sup>1</sup> On appeal, Trimpl contends that the trial court abused its discretion in admitting certain evidence because the traffic stop of his motor vehicle violated his rights under the Fourth Amendment to the Federal Constitution and Article I, Section 11 of the Indiana Constitution. In addition, Trimpl contends that the initial officer involved did not have the authority to stop or detain him pursuant to Indiana Code section 9-30-2-2 (2007). We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On November 10, 2007, Indianapolis Metropolitan Police Detective Rizwan Khan was driving home when he noticed that the vehicle in front of him was weaving back and forth, crossing the center line, and was almost driven into a ditch. Detective Khan initiated a traffic stop because he was concerned about the driver's safety. Detective Khan, who was not in uniform but was wearing his badge, activated the front and back flashing red and blue emergency lights on his unmarked police vehicle. Upon determining that the driver of the vehicle was intoxicated, Detective Khan requested assistance from the Drug Task Force. Although partly in the roadway, both vehicles were pulled off to the side of the road, and traffic was proceeding to drive around the vehicles.

At some point while Detective Khan was waiting for a member of the Drug Task Force to arrive, Trimpl pulled his vehicle over to the side of the road and stopped his vehicle

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<sup>1</sup> Ind. Code § 9-30-5-2 (2007).

inches behind Detective Khan's vehicle. Trimpl came to a complete stop, appeared to park his car with the headlights off, and made no attempt to drive around the stopped vehicles. Concerned about his own safety, Detective Khan approached Trimpl's vehicle and identified himself for the purpose of determining whether the driver needed assistance. Detective Khan described his encounter with Trimpl as follows:

I asked [Trimpl] "Can I help you?" and he just had a gazed look on his face. He didn't respond. I asked him again, "Can I help you?" "Why didn't you go around me?" and he said, "Well, you were in the way" and I said, "Well, I was on the side here. Why didn't you go around me?" and he just didn't have an answer and I could tell when I was talking to him that he had been drinking or had just had a drink. He had a glaze in his eyes and his speech was slightly slurred and I asked him, "Have you been drinking?" and he said, "Yes, I've just come from a bar" and he gave me a location.

Tr. p. 8. At the conclusion of his preliminary encounter with Trimpl, Detective Khan requested Trimpl's license. At some point during Detective Khan's encounter with Trimpl, a uniformed officer arrived on the scene. The uniformed officer radioed for additional assistance by another uniformed officer. Indianapolis Metropolitan Police Officer Christopher Smith responded to the request for additional assistance.

After arriving on the scene, Officer Smith administered the "walk and turn" and the "gaze nystagmus" field sobriety tests to Trimpl. Trimpl failed both tests. In addition, Officer Smith observed that Trimpl exhibited "slurred speech, bloodshot eyes, and very unsteady balance." Tr. p. 28. Approximately one hour after Trimpl had stopped his vehicle behind Detective Khan's vehicle, Officer Smith administered a breathalyzer test which indicated that Trimpl had a blood alcohol content of .19.

On November 11, 2007, the State charged Trimpl with Class A misdemeanor operating while intoxicated and Class A misdemeanor operating with a Blood Alcohol Concentration Score (“BAC”) of .15 or more. Trimpl made an oral motion to suppress the evidence relating to his arrest on January, 15, 2008. Following a hearing, the trial court denied Trimpl’s motion to suppress. On February 27, 2008, Trimpl filed a petition for interlocutory appeal, which was denied by this court on March 25, 2008. A bench trial was subsequently held on July 15, 2008, at which time Trimpl renewed his objection to the evidence. The trial court denied Trimpl’s motion and entered a guilty verdict for Class A misdemeanor operating while intoxicated. Trimpl now appeals.

### **DISCUSSION AND DECISION**

On appeal, Trimpl contends that the trial court abused its discretion in admitting the evidence stemming from his initial encounter with Detective Khan because the encounter violated both the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution. Trimpl also contends that Detective Khan lacked the authority to detain him pursuant to Indiana Code section 9-30-2-2.

A trial court has broad discretion in ruling on the admissibility of evidence. Accordingly, we will reverse a trial court’s ruling on the admissibility of evidence only when the trial court abused its discretion. An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court.

*Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003) (citations omitted).

#### **A. Fourth Amendment of the United States Constitution**

Trimpl asserts that the trial court abused its discretion in admitting the evidence

stemming from his encounter with Detective Khan because Detective Khan unlawfully detained him under the Fourth Amendment to the United States Constitution.

[T]here are three levels of police investigation, two of which implicate the Fourth Amendment and one which does not. First, the Fourth Amendment requires that an arrest or detention for more than a short period of time be justified by probable cause. Probable cause to arrest exists where the facts and circumstances within the knowledge of the officers are sufficient to warrant a belief by a person of reasonable caution that an offense has been committed and that the person to be arrested has committed it. Second, it is well-settled Fourth Amendment jurisprudence that police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based on specific and articulable facts, the officer has reasonable suspicion that criminal activity “may be afoot.” Accordingly, limited investigatory stops and seizures on the street involving a brief question or two and a possible frisk for weapons can be justified by mere reasonable suspicion. Finally, the third level of investigation occurs when a law enforcement officer makes a casual and brief inquiry of a citizen which involves neither an arrest nor a stop. In this type of “consensual encounter” no Fourth Amendment interest is implicated.

*Overstreet v. State*, 724 N.E.2d 661, 663 (Ind. Ct. App. 2000) (citations omitted), *trans. denied*.

The record indicates that Detective Khan did not stop Trimpl’s vehicle, but rather that Trimpl voluntarily stopped his vehicle behind Detective Khan’s vehicle. When Detective Khan first approached Trimpl, his purpose was to determine why Trimpl had stopped and whether he required police assistance. We observe that “not every encounter between a police officer and a citizen amounts to a seizure requiring objective justification.” *Id.* at 664. “To characterize every street encounter between a citizen and the police as a seizure, while not enhancing any interest guaranteed by the Fourth Amendment, would impose wholly unrealistic restrictions upon a wide variety of legitimate law enforcement practices.” *Id.*

“Indeed, it is not the purpose of the Fourth Amendment to eliminate all contact between police and the citizenry.” *Id.* Therefore, we conclude that this first encounter, initiated by Trimpl, was consensual, and therefore the Fourth Amendment does not apply.

Having concluded that Detective Khan’s initial encounter with Trimpl was consensual and therefore did not give rise to Fourth Amendment protection, we next consider whether Detective Khan’s ongoing encounter with Trimpl, including his request for Trimpl’s driver’s license, rose to the level of detention, thus triggering Fourth Amendment protection. We observe that the Indiana Supreme Court has adopted the Eleventh Circuit’s holding that an individual has effectively been detained when an officer retains the individual’s driver’s license. *Finger v. State*, 799 N.E.2d 528, 533 (Ind. 2003) (adopting *U.S. v. Thompson*, 712 F.2d 1356, 1359 (11<sup>th</sup> Cir. 1983)). Because Detective Khan requested Trimpl’s driver’s license, he was detained. Therefore we must determine whether Trimpl’s detention as a result of Detective Khan’s retaining his driver’s license was justified by probable cause. *See Overstreet*, 724 N.E.2d at 663.

To establish probable cause, the State was required to demonstrate that a reasonably prudent person would have believed that the facts demonstrated evidence of alcohol impairment. *Frensemeier v. State*, 849 N.E.2d 157, 162 (Ind. Ct. App. 2006), *trans. denied*. “Objectively observed clear indications of intoxication include dilated pupils, bloodshot eyes, glassy eyes, and the odor of alcohol on the person’s breath.” *Id.* Furthermore, “[T]he amount of evidence needed to supply probable cause of operating while intoxicated is minimal.” *Hannoy v. State*, 789 N.E.2d 977, 989 (Ind. Ct. App. 2003), *aff’d on reh’g*, 793

N.E.2d 1109 (Ind. Ct. App. 2003), *trans. denied*. We have held that noticing the odor of alcohol on the driver’s breath during the course of an investigation can be sufficient. *Id.*

Here, the evidence establishes that upon engaging in a consensual encounter with Trimpl, Detective Khan observed that Trimpl had a “gazed” look on his face, a glaze in his eyes, and his speech was slurred. Tr. p. 8. Trimpl did not respond to Detective Khan’s questions as to whether he required police protection. Furthermore, Trimpl admitted that he had been drinking and even shared with Detective Khan the location of the bar from which he had just come. It was only after this point that Detective Khan requested Trimpl’s license and detained him. We conclude based upon Detective Khan’s observations and conversation with Trimpl that a reasonably prudent person would have believed that Trimpl was operating a vehicle while intoxicated. Therefore, the State has demonstrated that Detective Khan had probable cause to detain Trimpl. Because Detective Khan had probable cause to believe that Trimpl was operating a vehicle while intoxicated, his detention of Trimpl did not violate any protections guaranteed under the Fourth Amendment.

#### **B. Article I, Section 11 of the Indiana Constitution**

Trimpl next asserts that the trial court abused its discretion in admitting the evidence stemming from his encounter with Detective Khan because Detective Khan effectuated an unlawful detention under Article I, Section 11 of the Indiana Constitution. “Indiana courts have the responsibility of independent constitutional analysis.” *Taylor v. State*, 639 N.E.2d 1052, 1053 (Ind. Ct. App. 1994). “This enables the Indiana Constitution to carry out its policies and to protect its citizens.” *Id.* “In carrying out this responsibility, our courts should

decide such issues independently of federal law.” *Id.* While decisions of the United States Supreme Court and other federal courts construing similar federal constitutional provisions may be persuasive, Indiana courts should grant neither deference, nor precedential status, to such cases when interpreting provisions of our own constitution. *Id.*

“The protections provided by the Indiana Constitution may be more extensive than those provided by its federal constitutional counterparts.” *Id.* However, those protections may also be less extensive; or they may be coterminous. *Id.* “In any event, Indiana courts have the obligation to determine whether an act is protected by the Indiana Constitution, independently of whether the act is protected by federal constitutional guarantees.” *Id.* at 1053-54.

Article I, Section 11 of the Indiana Constitution provides as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Section 11 guarantees “the rights of liberty, privacy, and free movement.” *Taylor*, 639 N.E.2d at 1054. “Investigatory stops are intrusions into the privacy of the detained individual and an interference with freedom of movement.” *Id.* Such stops constitute a seizure, and invoke the protections of Article I, Section 11 of the Indiana Constitution. *Id.*

However, an individual’s rights to liberty, privacy, and free movement under Article I, Section 11 are not absolute. *Id.* These rights must be balanced against society’s right to protect itself. *Id.* “Courts, thus, must balance the sometimes competing rights.” *Id.* “In



carrying out this balancing, Indiana courts look to the reasonableness of the intrusion and permit brief investigatory stops based upon reasonable suspicion of criminal activity.” *Id.*

Thus,

Article I, [Section] 11 of the Indiana Constitution permits brief police detention of an individual during investigation if the officer reasonably suspects that the individual is engaged in, or about to engage in, illegal activity. The reasonable suspicion requirement is satisfied where the facts known to the officer, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe that criminal activity has or is about to occur.

*Id.*

Applying this standard to the present action, we observe that Trimpl voluntarily left the stream of traffic on the roadway and brought his vehicle to a stop inches behind Detective Khan’s vehicle while Detective Khan was engaged in a traffic stop with another motorist. Detective Khan approached Trimpl to inquire as to whether he required police assistance. During this encounter, Trimpl appeared to be intoxicated and admitted that he had been drinking. Detective Khan then requested Trimpl’s driver’s license, effectively detaining him. *See Finger*, 799 N.E.2d at 533. We conclude that these facts, along with the reasonable inferences arising from them, constitute the basis for reasonable suspicion of criminal activity justifying further investigation. Detective Khan’s initial encounter with and subsequent detention of Trimpl did not violate the protections of Article I, Section 11 of the Indiana Constitution.

### **C. Indiana Code Section 9-30-2-2**

In addition, to the extent that Trimpl asserts that Detective Khan unlawfully detained

him pursuant to Indiana Code section 9-30-2-2, we disagree. Indiana Code section 9-30-2-2 provides as follows:

A law enforcement officer may not arrest or issue a traffic information and summons to a person for violation of an Indiana law regulating the use and operation of a motor vehicle on an Indiana highway or an ordinance of a city or town regulating the use and operation of a motor vehicle on an Indiana highway unless at the time of the arrest the officer is:

- (1) wearing a distinctive uniform and badge of authority; or
- (2) operating a motor vehicle that is clearly marked as a police vehicle; that will clearly show the officer or the officer's vehicle to casual observations to be an officer or a police vehicle. *This section does not apply to an officer making an arrest when there is a uniformed officer present at the time of the arrest.*

(Emphasis added).

Here, the evidence establishes that Trimpl voluntarily pulled his vehicle over behind Detective Khan's unmarked police vehicle and stopped. Detective Khan approached Trimpl's vehicle to determine whether he required police assistance. During this encounter with Trimpl, Detective Khan learned that Trimpl had been drinking and had just left a bar. After becoming aware that Trimpl had been drinking, Detective Khan detained Trimply by requesting Trimpl's driver's license. However, even if this detention were construed as an "arrest" under Indiana Code section 9-30-2-2, a uniformed officer was present at the scene by this point, nullifying any potential effect of Indiana Code section 9-30-2-2.

In sum, having concluded that Trimpl's arrest did not violate any protections guaranteed by either the Fourth Amendment to the United States Constitution or Article I Section 11 of the Indiana Constitution, and also that Indiana Code section 9-30-2-2 does not apply to the instant matter, we affirm Trimpl's conviction for Class A misdemeanor operating

while intoxicated.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and MAY, J., concur.